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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/531,058

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EXAMINER

STUART, COLIN W

ART UNIT

PAPER NUMBER

3771

MAIL DATE

DELIVERY MODE

06/07/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/531,058	Applicant(s) GRUNDLER ET AL.	
	Examiner COLIN STUART	Art Unit 3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 March 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25 and 26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 25 and 26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to the amendment filed 3/5/10. As directed by the amendment claims 21-24 have been cancelled and claims 25-26 have been added. As such, claims 25-26 are pending in the instant application.

Claim Objections

2. Claim 26 is objected to because of the following informalities: It appears the applicant made an error as the claim is dependent on a cancelled. It appears the applicant intends claim 26 to be dependent on claim 25 and will be examined as such. Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

Art Unit: 3771

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dobritz (4,010,748) in view of Jackson (4,026,285).

In regards to claim 25, Dobritz shows a system for heating and humidifying a gas for delivery to a patient including a fluid reservoir 9 having a fluid therein (see Fig. 1); a humidification chamber 4 in fluid communication with the fluid reservoir (see Fig. 1), the chamber having a gas inlet (connection from reference numeral 1 in Fig. 1) and a gas outlet (connection with reference numeral 19 Fig. 1), the gas inlet being at a lower portion of the chamber and the gas outlet position at a level above the gas inlet (see Fig. 1), the humidification chamber having a filling material 6 therein between gas inlet and gas outlet; a pumping means 10 connected to the fluid reservoir and to the humidification chamber (see Fig. 1) for passing the fluid from the reservoir into the humidification chamber; a gas supplying means 3 connected to the gas inlet of the chamber for passing a gas through the inlet and into the humidification chamber such that the gas flows upwardly through the filling material and through the outlet and to the patient; and a heating means 11 cooperative with the fluid in the fluid reservoir for elevating a temperature of the fluid in the reservoir to a desired level. The Dobritz device is silent as to the humidification chamber having a distribution chamber in an upper portion thereof and the distribution chamber having a sieve bottom. However, Jackson teaches a humidification chamber system which includes a distribution chamber in an upper portion of the humidification chamber (see Jackson Fig. 1; the

Art Unit: 3771

space where the fluid outlet 28 delivers fluid to chamber) and a sieve bottom (26 Jackson Fig. 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Dobritz device's humidification chamber by including the distribution chamber and sieve bottom as taught by Jackson as well as replacing the filling material (6 Dobritz) with the filling material (23 Jackson) as taught by Jackson so that "all surfaces of the humidifier are shown exposed to the water" (Jackson abstract ln. 7-8). The now modified Dobritz device's filling material is positioned below the sieve bottom, the pumping means passes fluid into the distribution chamber above the sieve bottom such that the fluid flows downwardly through the sieve bottom into the filling material and moves through the gas so to saturate the gas with fluid without aerosol formation such that the gas flows outwardly of the humidification chamber through the sieve bottom and out the outlet to the patient.

In regards to claim 26, the modified Dobritz device's humidification chamber and fluid reservoir are connected by a fluid circuit (7 Dobritz Fig. 1) and the pumping means is connected to the fluid circuit.

Response to Arguments

5. Applicant's arguments with respect to claim 25 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following documents are considered to be pertinent art: Milewicz (6,010,118), Jackson (4,026,285), and Koch (6,102,037) are all related to systems for heating and humidifying a gas for delivery to a patient.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to COLIN STUART whose telephone number is (571)270-7490. The examiner can normally be reached on M-F 8:00-4:00.

Art Unit: 3771

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/COLIN STUART/
Examiner, Art Unit 3771

/Justine R Yu/
Supervisory Patent Examiner, Art Unit 3771